

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

MATTHEW HERBERT,

Plaintiff

-vs-

GENERAL MOTORS CORP, et al.,

Defendants

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NO. 3:CV-05-2152

(Judge Kosik)

**MEMORANDUM AND ORDER**

The Takata defendants have filed a motion to compel functional testing of the subject retractor. Plaintiff opposes the motion claiming the testing will result in fixing the retractor to plaintiff's prejudice.

Plaintiff is proceeding primarily on a malfunction theory which is supported by some independent evidence. Although functional testing cannot guarantee a change in the retractor's condition, there are adequate procedures to safeguard against a resulting change. Regardless, a prejudicial change in the retractor will be aired by the jury.

The motion will be granted based on our acceptance of the Takata assurances contained in Section 1A of the Takata Reply Memorandum to the Motion.

SO ORDERED.

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s/Edwin M. Kosik  
United States District Judge

Dated: March 8, 2007